

Howard and Barbara Robertson
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UNITED STATES DISTRICT COURT
Eastern District of New York

VW CREDIT, INC

No. 10-CV-4515

Plaintiff

Vs

MOTION FOR
SUMMARY JUDGMENT

Howard and Barbara Robertson

Defendants

Relief Sought

Howard and Barbara Robertson, Defendants, move this court for summary judgment against VW Credit, Inc., Plaintiff, and request that this court render a judgment that Defendants took the vehicle at issue free of any perfected security interest or lien and mandate the issuance of a clean certificate of title.

Grounds for Relief

1. The Defendants are entitled to summary judgment because as more fully shown in the Affidavit of Brad Malm, the Asset Resolution Supervisor for VW Credit, the Certification of Monica McDermott, the Recovery Manager for VW Credit, and the November 9, 2010 letter brief of Robert Bonsignore, the Attorney for VW Credit, there is no genuine dispute to any material fact that needs to be tried in this action.

- a. Mr. Malm noted in his Affidavit that Plaintiff perfected its security interest in to the vehicle by recording its lien on the certificate of title with the Motor Vehicle Commission for the State of New Jersey. A true and correct copy of the title is attached to Mr. Malm's affidavit as exhibit "B". The date of perfection noted on the title is November 24, 2009.

- b. Ms. McDermott submitted a Certification in support of a Motion for Summary Judgment that VW Credit filed against non-party, Donna Mendes-LaMotte in Superior Court of New Jersey, Bergen County – Docket No. Ber-L-5085-11. The Court granted the instant Motion for summary Judgment in favor of Plaintiff and against Donna Mendes-LaMotte in the amount of \$151,493.05 as of July 13, 2012, plus continuing interest and attorney's fees. Ms. McDermott noted in her Certification that non-party Donna Mendes-LaMotte "granted VW Credit a security interest in the Bentley vehicle to secure the performance and payment of her obligations owed under the contract." This occurred on October 22, 2009 and made Plaintiff a holder of an unperfected security interest in the vehicle. Ms. McDermott further stated that VW Credit perfected its security interest in to and against the vehicle by recording its lien on the certificate of title with the Motor Vehicle Commission for the State of New Jersey. A true and correct copy of the title is attached to Ms. McDermott's Certification as exhibit "B". The date of perfection noted on the title is November 24, 2009.
- c. Mr. Bonsignore noted in his letter brief that "VW Credit perfected its security interest in the Bentley Vehicle by causing its lien to be recorded on the corresponding certificate of title, which was issued by the Division of Motor Vehicles ("DMV") of the State of New Jersey on November 24, 2009.

2. On these undisputed facts, the defendants are entitled to judgment as a matter of law because, for reasons set out more fully in the accompanying Memorandum of Law:

- a. There has been no documentation proffered to support an argument that Plaintiff perfected its security interest prior to November 24, 2009.
- b. If Plaintiff did not perfect its security interest in the vehicle at the time the Defendants paid for and took delivery of the vehicle, the court will have to determine the respective rights of Plaintiff as holder of an unperfected security interest in the vehicle and the Defendants as subsequent purchasers of the vehicle.

Record on Motion

This motion is based on this document, on the accompanying Statement of Undisputed Facts, on the accompanying Memorandum of Law, on the Affidavit of Brad Malm, on the Certification of Monica McDermott, on the Letter Brief of Robert Bonsignore, on the exhibit attached to the Affidavit, and on whatever evidence and argument that may be allowed at a hearing on this motion.

Dated: January 11, 2013



Howard Robertson



Barbara Robertson

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